



PATENT
Attorney Docket No. MSU-06787

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Tiedje et al.

Serial No.: 10/073,464

Group No.: 1634

Filed: 02/11/2002

Examiner: Bausch, S.

Entitled: Microbial Identification Chip Based On DNA-DNA Hybridization

**REQUEST TO WITHDRAW FINALITY OF FINAL
OFFICE ACTION MAILED JUNE 18, 2007**

Mail Stop - Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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Dated: October 18, 2007

By: Traci E. Light

Examiner Bausch:

The Applicants respectfully request that the Examiner consider withdrawing the pending Final Office Action as being prematurely issued. The Applicants have diligently pursued the prosecution in good faith and in accordance with USPTO guidelines:

The applicant who is seeking to define his or her invention in claims that will give him or her the patent protection to which he or she is justly entitled should receive the cooperation of the examiner to that end, and not be prematurely cut off ...

MPEP §706.07 Final Rejection [emphasis added]. Further, the Applicants have not engaged in any behavior intended to unfairly prolong the examination:

...the applicant who dallies in the prosecution of his or her application, resorting to technical or other obvious subterfuges in order to keep the application pending before the primary examiner, can no longer find a refuge in the rules to ward off a final rejection.

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MPEP §706.07 Final Rejection. On the contrary, the Applicants have objectively considered the Examiner's arguments and provided claim amendments where appropriate. In response, the Examiner has withdrawn some rejections and/or objections. In other words, progress is being made on this application. A Final Rejection at this point unfairly truncates the Applicants' entitlement to a full and fair hearing:

The examiner should never lose sight of the fact that in every case the applicant is entitled to a full and fair hearing ...

MPEP §706.07 Final Rejection. Finally, the Applicants assume that the Examiner must believe that "a clear issue" has been developed. The Applicants disagree. The Examiner raises four (4) separate issues including two § 102 rejections and two § 103 rejections. The statutory issues are not related to one another and therefore do not coalesce into "a clear issue".

The Examiner, therefore, has not identified a "clear issue" upon which it can be reasonably assumed that the Applicants have no rebuttal if the present finality stands. In fact, the Applicants believe that the claim amendments and argument in the previous office action should have resulted in allowance of the claims.

Consequently, the Applicants respectfully request that the Examiner consider withdrawing the present final office action.

Dated: October 18, 2007



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